IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.29 OF 2001

---

1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

CHANDULAL LAXMANBHAI
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:
MR KJ KAKKAD FOR PETITIONER

Coram: MR.JUSTICE S.K. Keshote,J
Date of order: 13/03/2001

C.A.V. ORDER

#. In this petition under Article 227 of the Constitution of India, the petitioner is praying for an order to run concurrently the sentences passed in Criminal Case Nos.1419/97 & 1420/97 by the learned Judicial Magistrate, First Class, Visnagar and Criminal Case No.399/96 passed by the learned Magistrate, Dhoraji. Second prayer has been made to accordingly issue direction to the jail authorities in these three matters to take sentences to run concurrently.

#. The facts of the case are that the petitioner was an accused in Criminal Case No.1419/97 and 1420/97 and No.399/96, in the first two cases, in the court of Judicial Magistrate, First Class at Visnagar and in the last case in the court of Judicial Magistrate, First Class, Dhoraji, for offences punishable u/s.138 of the Negotiable Instruments Act. These complaints were filed by respondents No.2 and 3. In these three complaints, the petitioner was convicted by the courts. However, the courts have not passed the order that the sentences are to run concurrently.

#. The learned counsel for the petitioner contended that section 427 of Cr.P.C. makes a specific provision and empowers the court to order to run the sentences concurrently in two cases in which the accused has been convicted. In support of this contention, he placed reliance on decision of the Orissa High Court in the case of Jadu alias Jadua Bhoi v. State of Orissa, reported in 1992 CR.L.J. 2117.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Section 427 of Cr.P.C. reads as under:

427. Sentence an offender already sentenced for another offence:

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under Sec. 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence

shall run concurrently with such previous sentence.

It is true that in appropriate case, the court has power to order to run concurrently sentences in two cases, but it is not absolute rule that in all the cases, this order has to be passed. It is the discretion of the court. In this case, though nothing can be said finally, the learned court may not have committed any error in not exercising this discretion in favour of the petitioner. Looking to the facts of this case, the courts have taken a very lenient view in awarding sentence. Otherwise also, at no point of time during the trial, the petitioner appears to have made any request to the court for joint trial of the case. A copy of the decision produced on the record of this case at Annexure-A though name therein may be identical to the name of the petitioner of this case, but that is not the judgment given in this case. Now after the conviction the petitioner has filed this petition. It is also not the case of the petitioner that he has made a request to the trial court to order sentence to run concurrently. On the record, two documents are there which are purported to be applications made by petitioner to the court concerned. These are the copies of the applications which are filed by petitioner for obtaining certified copies for filing the appeal. This writ petition has been filed by petitioner in this court on 16.1.01 and by this time, copies of the judgments would have been received by petitioner. These judgments are appealable as per petitioner's own case and this prayer can be made by petitioner in the appellate court. In such matters, the approach of the petitioner to this court at this stage is wholly uncalled for and not advisable. At this stage, in this petition no relief can be granted to the petitioner for the reasons first that the copies of the judgments of the court below have not been produced. Second that the judgments are appealable and this plea is available to the petitioner in appeal. Thirdly, the petitioner has already applied for certified copies of the judgments and by this time, judgments would have been received and possibly, he would have also filed appeals. Lastly, before approaching this court, the petitioner has to first approach the learned Sessions Court by way of revision application in the matter. The decision on which reliance has been placed by learned counsel for the petitioner needs not be discussed at this stage, otherwise, any decision given on merits of the matter may cause prejudice to his case where he filed appeal or revision application or any application before the trial court. In the result, this petition fails and the same

is dismissed. Whatever observations made and findings recorded may not be taken to be final decision on merits and the appellate or revisional court on approach of the petitioner is free to decide the matter in accordance with law without having been influenced by observations or findings recorded in this order.

(S.K.Keshote, J.)

(sunil)